

COMMISSIONERS APPROVAL

CHILCOTT *gj*

LUND *BL*

THOMPSON *AT*

TAYLOR (Clerk & Recorder)

Date.....February 9, 2006

Members Present.....Commissioner Greg Chilcott,  
Commissioner Betty Lund and Commissioner Alan Thompson

Minutes: Glenda Wiles

The Board held a public hearing on a road abandonment petition by Susan and Kevin Hatch. Present at this meeting was Civil Counsel James McCubbin, Road Supervisor David Ohnstead, Engineer Tom Hanson, Petitioners Kevin and Susan Hatch, Attorney for the Petitioners Howard Recht and Tara Hatch.

Commissioner Chilcott called the hearing to order reading the legal notice that was noticed in the paper of record.

Tom Hanson presented the Viewer's Report, reading most of the Viewer's Report and presenting various maps for reference and review. The Viewer's Report was divided into two issues, the first being Old Darby Road and Overturf Road. James McCubbin asked if number 5 on page 2 (in reference to Old Darby Road) was a 30' historical claim for right-of-way. Tom indicated the width might be 30-33', but it is within the pastureland and has no impact. Commissioner Chilcott asked if the proposed abandonment is outside the 60' right-of-way. Tom stated it is outside that right-of-way. James stated if this had not been a County road, the County would have no interest. Kevin stated he also owns property on the opposite side of the right-of-way. Tom stated there is a 60' road easement for a County road and it is unknown how that easement came into being. He stated Kevin's deed does not start until after the 60' easement so it leaves this approximately 30' strip of land. Tom stated the travel way is 3' west of the section line at the north end of Kevin's property. Tom noted if a Quiet Title occurs, there would need to be a survey.

Howard Recht stated it is not the Hatch's intent to compromise the 60' right-of-way. He stated it is important for the County to state they have no interest beyond the easement; then they can survey this and bring a Quiet Title action, leaving the County out of it. James stated if there is no County road, there is no action by the Board. If the Quiet Title action occurs, the Board of County Commissioners can sign a consent form allowing this to take place.

Commissioner Chilcott stated as long as the 60' right-of-way is defined and not compromised, he has no concern over this particular strip of land.

Howard stated he anticipated the County stating they have no known interest; then it makes the issue very easy to deal with. James stated the only concern he has is if the 60' is centered on the section line. David Ohnstad stated it varies and meanders on the road. Without a survey, one would not know. The county could claim the 60' easement centered on the existing roadway. James stated he does not want to inadvertently abandon part of the County's right-of-way. Tom stated the traveled way seems to be west of the centerline, so there should be no problem. James stated that statement might not be consistent as to what is written, as it could bring us less than 20' to the centerline. Tom stated he does not address the centerline from the traveled way or the centerline because he is not sure what the statutory language is on the right-of-ways. James stated that is his concern, in that he does not want to abandon this without language that states the county has a 60' of right-of-way, 30' from each side of the center line right-of-way. He stated he would suggest amending number 5 on page 2 to reflect the language: "and outside of the 27' historical claim for right-of-way".

Commissioner Chilcott stated the Hatch's will end up surveying this, and since they own both sides, (the 60' right-of-way down the centerline), and the county defines no interest in this strip of land; he agreed it should be clearly defined for now and forever. James stated a survey and Quiet Title action could be done, then the Commissioners could sign the survey. Howard stated they need a starting point of where the county feels the right-of-way is; that way they can claim ownership from that point. He stated he does not want to leave this ambiguous. James stated the county only has interest in 30' on each side of the traveled centerline. Howard stated that would entail a fair amount of expense based upon the error of history. James stated he has not researched this road to see if it is centered on the section line. If they agree on the survey, there should be no problems. Howard stated the question arising is how many other parties need to become involved in this, i.e., other residents on the east side of the road in order to determine the full length of the 60'. Tom stated he is not sure why that would matter, as they are only addressing the 60' on the west side. James indicated they do not want to see a 3' 'jig-jog' in the right-of-way. He also stated the county has no interest in the 27 or so feet outside the right-of-way. Commissioner Lund stated historically this has been used as pasture and it is fenced.

Kevin stated the other parcel has been surveyed and there are survey pins on that side of the road. Commissioner Chilcott stated he is not as concerned over the 3' jog as others are, because the roads meander.

David stated the likelihood of finding where the road should be is slim. Therefore, absent that, they will assume it is an easement based on the existing roadway and anything outside that easement holds no interest for the County. If they make improvements, they will not specifically align it on the centerline.

Tom suggested they change 2 of Findings on Page 2 to read: "The County has no known claim or interest in a strip of land 30' west of the centerline". He asked if the survey can define that, and be shown in the Quiet Title action. Howard stated he has no problem with that as long as it is beyond 30' west of the centerline. This gives them a starting point.

James asked if any part of the centerline of this road could be east of the centerline.

Commissioner Thompson had to leave the meeting at this time due to another meeting in Missoula with Human Resources.

Tom stated it is possible that it traverses over to the east side. James stated they should add language to #2.

Commissioner Lund made a motion to accept the Viewers Report and to change Finding No. 2 to read "The County has no known claim or interest in a strip of land outside, 30' east of the centerline of the traveled way or 30' east of the section line whichever is most westerly". Commissioner Chilcott seconded the motion and all voted "aye".

Commissioner Lund made a motion to give James the authority to deal with the Quiet Title action in court when it is filed, showing that the county has no interest in this strip of land. Commissioner Chilcott seconded the motion and all voted "aye".

Tom continued to read the Viewers' Report, dealing with the second portion of the petition, that being Overturf Road. Tom stated it is important to make sure they know what is dedicated and what is public way. If Overturf ever needs to be rebuilt, it will be expensive; however, they do not want to encroach on the area of the historical log home.

Commissioner Chilcott stated he wants to make sure they have their 60' right-of-way, and at the same time not drive through Kevin's front room. He stated a survey is very important to define this.

Howard asked if the county is claiming title to Overturf or traveled way. Tom stated the county has a dedicated right-of-way through Lake Como Orchards No. 4. There does not appear to be any dedicated width on the Lake Como Orchards No. 4 plat. James asked about the line delineation on the plat. Tom stated he is unsure if the distance is to the centerline. The plat has some ambiguities and they would still be 'guessing' on some of those distances. He stated the question is how the quarter corner was established, particularly in reference to 1908. The property surveyed shows it is a county road but no indication that it was dedicated. James asked about the later amended subdivision plat and how it might have changed the dedication of the road.

James stated he understands the Viewers' Report and does not disagree; however, the Board of County Commissioners should not abandon anything until the survey is completed.

Commissioner Lund made a motion to accept the Viewer's Report as amended and continue this hearing until August 9, 2006 at 10:00 a.m. Commissioner Chilcott seconded the motion and all voted "aye".

In other business, Commissioner Chilcott attended an RC & D Program meeting during the afternoon hours.